IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23985 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SATYA SHANKER CO-OPERATIVE HOUSING SOCIETY LIMITED - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :

MR DR BHATT for Petitioner(s) : 1,MR AS SAIYED for Petitioner(s) : 1,
MR HM PRACHCHHAK ASST GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/12/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioner-Society has

challenged the legality and validity of the order passed by the Deputy Collector, Stamp Duty Valuation, Ahmedabad dated 24.12.1999 passed under Section 32(A) of the Bombay Stamp Act by which the petitioner is directed to pay deficit stamp duty of Rs.10,13,025/- including the penalty of Rs.250/- and Rs.500/- penalty under Rule-9 of the Rules with regard to the document No.19764 executed and presented before the Sub-Registrar, Ahmedabad dated 27.8.92.

2.Shri D.R.Bhatt, learned advocate appearing on behalf of the petitioners has vehemently submitted that the petitioner is not served with the notice under Rule-4 of the Rules before passing the impugned order. It is also contended that the impugned order dated 24.12.92 is contrary to the provisions of Rule-4 of the Bombay Stamp (Determination of Market Value of Property) Rules; 1984 and as such, no particulars and/or reasons are given by the authority for determining the valuation of the property in question at Rs.72,10,000/-. It is also further submitted that

as such the impugned order came to be passed on the basis of the notice under Rule-4 of Rules; 1984 by which the petitioner was called upon to prove that the valuation of the property/land in question is at Rs.1,80,250/-. He has relied upon the judgment of this Court in case of *Budhabhai Merabhai Bharwad V. State of Gujarat reported* in (2005) 8 GHJ Page-374 : 2005 (2) GLR 1792. The learned advocate for the petitioner has also placed reliance on another decision of the learned Single Judge of this Court rendered in case of PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS. Reported in 2003 (1) GLR 454, wherein it is held that when the Chief Revenue and Controlling Authority passed an order in cyclostyled form wherein some gaps were filled up and few sentences were added, it is an order passed without proper application of mind and not speaking order and the same cannot be sustained in eye of law.

3. Shri H.M.Prachchhak, learned AGP appearing on behalf of the respondents is not in a position to dispute that in the impugned order dated 24.12.1999

no particulars are given that on what basis the Deputy Collector has come to the conclusion that the valuation of the property in question is at Rs.72,10,000/-. The learned AGP for the Authorities is also not in a position to dispute that as such the controversy in question is directly covered by the judgment of this Court in case of ***Budhabhai Merabhai Bharwad and another decision PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS.***(supra). However, the learned AGP has submitted that the valuation of the property in question is fixed on the basis of the Jantri.

4.Heard the learned advocates appearing on behalf of the parties.

5.I have gone through the order passed by the Deputy Collector. In the impugned order, no particulars and/or basis have been mentioned by the Deputy Collector that on what basis, he has come to the conclusion that the valuation of the property in question is at Rs.72,10,000/-. Nothing is on record to suggest that the petitioner has been served with

any material relied upon by the Deputy Collector, if any, for ascertaining and/or fixing the valuation of the property in question at Rs.72,10,000/- It also prima-facie appears that even the impugned order has been passed on the basis of the notice issued under Rule-4 of the aforesaid Rules and by which the petitioner was called upon to prove that the valuation of the property is at Rs.1,80,250/- and no more. This Court has remanded the matter to the Deputy Collector for deciding the same afresh after issuing proper notice under Rule-4 of Rules 1984 and after giving an opportunity to the petitioner and after providing the material upon which the Deputy Collector wants to rely to determine the valuation of the property in question.

6. For the reasons stated above and for the reasons stated in the judgment of this Court in case of BHUDHABHAI MERABHAI BHARWAD and another decision PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS.(supra), the petition is allowed partly. The impugned order passed by the Deputy Collector,

Stamp Duty Valuation, Ahmedabad dated 24.12.1999 is hereby quashed and set aside and the matter is remanded to the Deputy Collector, Stamp Duty Valuation, Ahmedabad for deciding the same afresh in accordance with law and on merits and after issuing proper notice under Rule-4 of the Rules of 1984 and after giving an opportunity to the petitioner and after supplying necessary material to the petitioner upon which the Deputy Collector proposes to rely while determining and/or ascertaining the valuation of the land in question. The said exercise to be done within a period of 6 months from today. It is, however, clarified and has agreed by the petitioner that while considering the case on remand,the authority is required to consider the position which was prevailing prior to 1999 and / or the date on which the document was executed. It is, however, made clear that if any amount is already paid/deposited by the petitioner pursuant to the order passed by the Deputy Collector, Stamp Duty Valuation, Ahmedabad dated 24.12.1999 then in that case, the respondents are not required to refund the said amount at this

stage and the same would be subject to the ultimate outcome of the proceedings on remand and the said amount be adjusted on the basis of the order that may be passed by the Deputy Collector.

7.Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

Direct Service is permitted.

(M.R.SHAH, J.)

=kailash=